

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
) Civil Action No. 1:18-cv-00702
ESTATE OF JOHN BORETA, TIERRA)
LINDA RANCH HOMEOWNERS ASSOCIATION)
GILLESPIE COUNTY TAX ASSESSOR,)
PROJECT DEVELOPMENT COMPANY)
LIMITED, S.A., and ALAN L. TINSLEY AS
TRUSTEE OF PROJECT DEVELOPMENT)
COMPANY LIMITED, S.A.,)
)
Defendants.)

UNITED STATES OF AMERICA'S COMPLAINT

The United States of America, pursuant to pursuant to 26 U.S.C. §§ 7401 and 7403, at the direction of the Attorney General of the United States, or his delegate, and at the request of the Secretary of the Treasury, or his delegate files this Complaint against Defendants, Estate of John Boreta, Terra Linda Ranch Homeowners Association, Gillespie County Tax Assessor, Project Development Company Limited, S.A., and Alan L. Tinsley as Trustee of Project Development Company, S.A., and states as follows:

NATURE OF ACTION

1. This is a civil action brought by the United States pursuant to 26 U.S.C. §§ 7401 and 7403 to foreclose on real and personal properties owned by John Boreta and/or the Estate of John Boreta.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 26 U.S.C. § 7403 and 28 U.S.C. §§ 1340 and 1345.

3. Venue of this action properly lies in this district pursuant to 28 U.S.C. §§ 1391(b) and 1396.

THE PARTIES

4. Plaintiff is the United States of America.

5. Defendant, Estate of John Boreta, is the representative of the taxpayer John Boreta in this action and can be served through his executor/executrix.

6. Defendant, Tierra Linda Ranch Homeowners Association is named a party to this suit under 26 U.S.C. § 7403(b) because it may have an interest in the properties described in the Complaint and may be served through its registered agent.

7. Defendant, Gillespie County Tax Assessor is a Defendant, pursuant to 26 U.S.C. § 7403(b), because property taxes made be owed to Gillespie County and other local taxing authorities.

8. Project Development Company Limited, S.A., (“Project Development Company”), is named as a Defendant under 26 U.S.C. § 7403(b) because it may have an interest in the properties as the beneficiary of an outdated Deed of Trust on the properties at issue and may be served through its registered agent and/or trustee on the Deed of Trust.

9. Alan L. Tinsley as Trustee for Project Development Company Limited, S.A., is a Defendant under 26 U.S.C. § 7403(b) because he is named as the trustee for an outdated Deed of Trust on the properties, and thus, may have an interest in the properties at issue.

THE TAX LIABILITY

10. A delegate of the Secretary of the Treasury assessed against, and gave notice and demand for payment to John Boreta for income taxes, penalties, statutory additions, and interest, in the amounts, years and assessment dates as follows:

Year	Amount due as of 3/1/2017	Assessment date
2004	\$951,355.79	12/17/2012
2005	\$441,474.95	12/17/2012
2006	\$453,406.01	12/17/2012
2007	\$ 1,183.14	12/17/2012
2011	\$ 3,613.45	03/11/2013
Total	\$1,851,033.34	

11. The assessments against Boreta for the 2004-2007 years were agreed deficiency assessments. The assessment for 2011 was the amount Boreta showed as the tax due on his 2011 return. As of March 1, 2017, the total due for these 2004-2007 and 2011 tax periods plus statutory accruals was \$1,851,033.34.

12. Notice and demand for payment of the assessments referred to above was made by the IRS to Boreta on or about the date of the assessments.

13. The United States recorded a Notice of Federal Tax Lien against John Boreta, deceased, in the real property records of Gillespie County, Texas, on November 25, 2014.

THE SUBJECT PROPERTIES

14. Boreta was the owner of four tracts of real property located in Gillespie County, ("Tierra Linda Ranch Estates Tracts"), and further described as follows:

A 6.20 acre tract of land in Gillespie County, Texas, being more particularly described as Tract No. 3, Tierra Linda Ranch Estates, a subdivision of Gillespie County, Texas, according to map or plat thereof recorded in Volume 1, Page 1, of the Plat Records of Gillespie County, Texas.

A 7.25 acre tract of land in Gillespie County, Texas, being more particularly

described as Tract No. 203, Tierra Linda Ranch Estates, NO. TWO, a subdivision of Gillespie County, Texas, according to map or plat thereof recorded in Volume 1, Page 2, of the Plat Records of Gillespie County, Texas.

A 6.10 acre tract of land in Gillespie County, Texas, being more particularly described as Tract No. 305, Tierra Linda Ranch Estates, NO. THREE, a subdivision of Gillespie County, Texas, according to map or plat thereof recorded in Volume 1, Page 9, of the Plat Records of Gillespie County, Texas.

A 7.50 acre tract of land in Gillespie County, Texas, being more particularly described as Tract No. 516, Tierra Linda Ranch Estates, NO. FIVE, a subdivision of Gillespie County, Texas, according to map or plat thereof recorded in Volume 1, Page 26, of the Plat Records of Gillespie County, Texas.

15. Boreta acquired the Tierra Linda Ranch Estates Tracts in 1973. In 1990, Boreta acquired full ownership of the Tierra Linda Ranch Estates Tracts from Janet Boreta.

16. On November 30, 1995, Boreta Granted a Deed of Trust to Alan L. Tinsley as trustee for the Project Development Company in the Tierra Linda Ranch Estates Tracts. The Deed of Trust allegedly secured a Note that had a maturity date of December 31, 2005. However, this Note was not filed or renewed in the Gillespie County property records. Project Development Company failed to enforce the Note within four years of the maturity date of the Note. Thus, under Tex.Civ.Prac. & Rem. Code Ann § 16.035 the Deed of Trust and Note are void.

17. Project Development Company is allegedly a Panamanian Corporation. However, Project Development Company has never been registered in the State of Texas to conduct business.

18. Upon information and belief Project Development Company Limited's Deed of Trust and Note are shams merely to hinder creditors from collecting against the Tierra Linda Ranch Estates Tracts.

19. On December 4, 2013, Defendant, Terra Linda Ranch Homeowners Association filed

four “Delinquent Assessment Lien Affidavits”, one against each of the above listed tracts of properties in the Tierra Linda Ranch Estates subdivision.

20. John Boreta died on May 10, 2013. An estate for John Boreta was opened in Alberta, Canada.

COUNT I

(Foreclose Federal Tax Liens against the Tierra Linda Ranch Estates Tracts)

21. The United States is seeking to enforce its federal tax lien against the Tierra Linda Ranch Estates Tracts described above to pay the tax liabilities, penalties and interest of John Boreta.

22. Pursuant to 26 U.S.C. § 6321, federal tax liens attached to John Boreta’s interest in the Tierra Linda Ranch Estates Tracts upon the assessment of the taxes, penalties and interest set forth in paragraph 10 above. The federal tax liens attached Boreta’s interest in the Tierra Linda Ranch Estates Tracts, prior to his death and any subsequent transfer of the properties to his executor or estate. Transferred property to which a federal tax lien has attached at the time of transfer is subject to collection action in the hands of the transferee without regard to the transferor’s liability. *United States v. Bess*, 357 U.S. 51, 57-58 (1958). Even a taxpayer’s death does not adversely affect the validity of a federal tax lien since the federal tax lien remains attached to the property and follows it into the executor hands. *United States v. Bess*, 357 U.S. at 57; *Estate of Brandon v. CIR*, 133 TC 83, 85-86 (2009). Moreover, a federal tax lien is effective upon assessment against the whole world, even if the notice of the lien is not recorded, except for the creditors protected in I.R.C. § 6323. *Rice Investment Co. v. United States*, 625 F.2d 565, 568 (5th Cir. 1980). An executor, decedent’s heirs, devisees or legatees do not fall within any of the preferred categories of I.R.C. § 6323. *Spillar v. C.I.R.*, 2011 WL 1356714, at

*1 (S.D.Tex.,2011). Thus, the United States seeks to foreclose the liens, sell the Tierra Linda Ranch Estates Tracts and have the sales proceeds applied to John Boreta's outstanding federal income tax liabilities.

FOR THESE REASONS, the United States requests the Court to Order:

- A. That the Tierra Linda Ranch Estates Tracts described above are subject to the claim of the United States; the Court determine the validity of the claims of the Defendants named herein against the properties; and also determine the priority of all respective claims as against the claim of the United States;
- B. That the Deed of Trust and note to Project Development Company be declared null and void;
- C. That the United States has valid federal tax liens against the Tierra Linda Ranch Estates Tracts described in above, that the liens be foreclosed, and the properties be sold in accordance with the law and practice of this Court, and that the proceeds of such sale be distributed in accordance with the findings of the Court and the rights of the parties; and
- D. That the United States have such further relief as this Court may deem just and proper, including its costs.

JOHN F. BASH
United States Attorney

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ATTORNEYS FOR UNITED STATES

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 370 Other Fraud	LABOR	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 371 Truth in Lending	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence	FEDERAL TAX SUITS	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	Habeas Corpus:	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
		<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition)		
		<input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): _____

VI. CAUSE OF ACTION

Brief description of cause: _____

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions):	JUDGE	DOCKET NUMBER
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DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Remainder of Defendants:

Terra Linda Ranch Homeowners Association, Gillespie County Tax Assessor, Project Development Company Limited, S.A., and Alan L. Tinsley as Trustee of Project Development Company, S.A.